

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13073 of Dunbarton Solar Joint Venture, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3101) to use all floors of the subject premises as professional offices in an R-1-A District at the premises 2820 Upton Street, N.W., (Square 2238, Lot 11).

HEARING DATE: October 24, 1979
DECISION DATE: November 7, 1979

FINDINGS OF FACT:

1. The subject property is located on the south side of Upton Street, N.W. approximately 1,000 feet east of Connecticut Avenue. It is known as 2820 Upton Street, N.W. and is in an R-1-A District.
2. The subject site has sixty-nine feet of frontage on Upton Street and is 117.24 feet deep at its longest point. The subject site slopes sharply downhill from north to south.
3. The subject site is developed with a three story brick single family detached dwelling with a one car garage. The dwelling consists of four bedrooms, den, dining and living room, kitchen, playroom, guest room, mechanical/storage area, utility area and five baths. The roof is covered with solar panels on its southern side. The subject premises is occupied presently by the applicant's family of six persons.
4. To the north of the subject property is the Academy of the Holy Cross and Carnegie Institute of Washington across Upton Street in the R-1-A District. To the east is a contemporary styled single family detached dwelling under construction in the R-1-A District. To the south is 28th Place, where there are single family detached dwellings in the R-1-A District. These dwellings are at a much lower elevation than the subject premises. To the west is a twenty foot wide paper alley followed by a single family detached dwelling in the R-1-A District. Further west and across 29th Street there are semi-detached and row dwellings in the R-2 District.
5. The applicant proposes to use the subject premises as his professional architectural offices. The applicant testified that it would be a temporary use and would cease when the subject property is sold. The applicant's offices are presently located at 5125 MacArthur Boulevard, N.W.

6. The proposed office would operate from 9:00 a.m. to 6:00 p.m. There would be two partners, two secretaries and seven other employees. The applicant testified that on-site parking is available for eight cars. There are few meetings and most of the conferences would be held at the clients' offices.

7. The applicant testified that there are several hardships inherent in the property. The unusually steep grade has caused difficult foundations which were extremely expensive to build. Because of the topography only a small portion of the house is visible from the street and consequently does not appeal to prospective buyers in the price range of \$339,000.00. The applicant has attempted to sell or rent the house for more than two years. The applicant further testified that the third hardship is the fact that the house has a sophisticated solar heating system and this being a new technology frightens prospective buyers. He stated that banks are concerned about the solar heating system even though there is a complete backup system to heat the house.

8. The applicant desires to have his architect's office in the subject dwelling to continue to work on the solar system, further document it and to show it to companies and clients developing such technology. The applicant has a new residence and feels that if the subject premises is unoccupied it would be subject to possible vandalism.

9. The subject property was assessed for \$164,434.00 in 1979. In 1980 it was assessed for \$195,661.00. The applicant is now asking \$339,000.00 as a selling price.

10. The applicant's witness testified that he and the applicant alone know how to operate the new solar system and that there is no service organization to service the subject system.

11. An architect's office is first permitted in an SP-2 District as a special exception.

12. The Office of Planning and Development, by report dated October 17, 1979, recommended that the application be denied on the grounds that the proposed use of these premises as an office, architectural firm, would be incompatible with the land uses at this location. The OPD believed that approval of a commercial use in the subject R-1-A and R-2 District neighborhood, given its viable residential and institutional components would substantially impair the intent, purpose and integrity of the Zoning Regulations and Map. The solar heated and cooled premises has been used since its construction to the present time as a single family dwelling in compliance with

R-1-A District regulations. The OPD was of the opinion that the applicant's inability to sell the house for residential purposes and the solar heating system's influence on said sales are not reason enough to grant this use variance. The OPD was of the view that the proposed use would cause substantial detriment to the public good and should be denied. The Board concurs.

13. There were many letters in the record from neighboring property owners who opposed the application on the grounds that the proposed office use was not in harmony with the current zoning, that office use would create an adverse impact on what is now a quiet peaceful neighborhood, that there were many areas of the city where professional offices could locate and still conform to the Zoning Regulations, that the proposed use would downgrade the environmental quality of the neighborhood and that the present neighborhood is exclusively residential in character. Some private citizens appeared at the Public Hearing in opposition to the application. The Forest Hills Citizens Association appeared at the Public Hearing in opposition to the application. A representative of residents of the 2800 and 2900 block of Upton Street testified in opposition to the application and submitted a petition with some thirty-six signatures in opposition. The grounds of all opposition were basically the same as recited above.

14. There were a few letters in the record from persons who were not opposed to the application.

15. Advisory Neighborhood Commission 3F testified that it voted unanimously to state for the record its opposition to the conversion of residential space to office use. The ANC further noted that it had not had the opportunity to hear a detailed presentation of the applicant's case. The Chair noted for the record that the objection was of a general nature and not directed to the specific application.

16. The Board is required by statute to give great weight to the issues and concerns of the ANC. In this instance since no specific grounds were stated for the ANC resolution the Board cannot address any particular issues or concerns.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a variance from the use provisions which requires a showing of a specific undue hardship that stems from the property itself. The Board notes that the property is presently being used as a residence and that it is for sale as a residence. There is no evidence that the property cannot be used for the purpose for which it is currently zoned. It may well be that the asking price is too high. It may also be due to the fact as testified to by the applicant, that a situation has been created, as is evident in the solar heating system, that few persons can operate such a system and thus the

dwelling is less marketable. But these latter reasons are not hardships stemming from the property itself. They result from the actions of the applicant. The Board further concludes as evidenced in Finding No. 13 that the variance cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (Walter B. Lewis and William F. McIntosh to deny, Leonard L. McCants to deny by proxy, Choethiel Woodard Smith and Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 10 MAR 1980

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.